Moreover, there is no conflict of decisions. The holding of the court below that the Board's rule is a reasonable exercise of its authority is consistent with the holdings of the other courts of appeals which have had occasion to consider the question. *National Labor Relations Board* v. *Chambers Mfg. Corp.*, 278 F. 2d 715, 716 (C.A. 5); *Raser Tanning Co.* v. *National Labor Relations Board*, 276 F. 2d 80, 82 (C.A. 6), certiorari denied, 363 U.S. 830.

Finally, even if the discovery procedure of the Federal Rules of Civil Procedure, on which the petitioner relies (Pet. 15–19), were fully applicable to the Board (and it is clear that it is not[5]), the petitioner has made no showing that would entitle it to the prehearing affidavits under that procedure. *Hickman* v. *Taylor*, 329 U.S. 495; *Cleary Bros.* v. *Christie Scow Corp.*, 176 F. 2d 370, 372 (C.A. 2); *Martin* v. *Capital Transit Co.*, 170 F. 2d 811 (C.A.D.C.). As the court below found (Pet. 11a–12a), "Neither before the Board nor here has respondent demonstrated a 'need' to examine the documents in question before the administrative hearing except by broad statements

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itself. The Board found that the petitioner did not ask the Independent for such proof (B.A. 10, n. 11, 54–55). However, the membership cards, constitution, and by-laws of the Independent were received in evidence at the hearing (B.A. 115–116, 122–123). Thus, if this information were the only thing which stood in the way of a settlement, the petitioner could have settled the case at any time after it received the information at the hearing.

[5] *National Labor Relations Board* v. *Globe Wireless, Ltd.*, 193 F. 2d 748, 751 (C.A. 9); *Raser Tanning Co.* v. *National Labor Relations Board*, 276 F. 2d 80 (C.A. 6), certiorari denied, 363 U.S. 830.

that such examination was necessary in its preparation for the unfair practices hearing. Respondent has not shown it was prejudiced, surprised or in any way put at a disadvantage because of the operation of the Board's regulation."

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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JULY, 1961.

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT
CHICAGO 10, ILLINOIS

Tuesday, February 28, 1961

Before Hon. John S. Hastings, Chief Judge; Hon. Win G. Knoch, Circuit Judge; Hon. Frederick O. Mercer, District Judge

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No. 13149

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

VAPOR BLAST MANUFACTURING COMPANY, RESPONDENT

Petition for Enforcement of an Order of the National Labor Relations Board

This cause came on to be heard on the petition of the National Labor Relations Board for enforcement of its order entered on January 12, 1960, respondent's answer to said petition, and the record from the National Labor Relations Board, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the petition of the National Labor Relations Board for enforcement of its order be granted and a decree will be entered accordingly,

in accordance with the opinion of this Court filed this day.

A True Copy:
Teste:

(S) KENNETH J. CARRICK,
Clerk of the United States Court of Appeals for the Seventh Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1981

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1961

No. 155

VAPOR BLAST MANUFACTURING COMPANY,
a Wisconsin business corporation,
Defendant and Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Plaintiff and Appellee.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY TO BRIEF IN OPPOSITION

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IN THE

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VAPOR BLAST MANUFACTURING COMPANY,
a Wisconsin business corporation,
Defendant and Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Plaintiff and Appellee.

On a Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY TO BRIEF IN OPPOSITION

QUESTIONS DISCUSSED IN REPLY BRIEF

1. Whether the petition for certiorari was filed within the ninety-day period prescribed in 28 U.S.C.A. 2101 (c).

2. Whether, in the circumstances of the case, the petitioner was prejudiced by the Board's denial of access to charging parties' verified pre-trial statements identifying Constitution and By-Laws and membership application

cards signed between September 2 and September 10, 1958 of a newly organized Independent Union claiming organization on September 2, 1958 and membership by the majority of the shop employees by September 10, 1958, until after they had testified at the hearing.

SUPPLEMENTAL STATUTES INVOLVED

The Statutes involved are set forth in the Appendix to the petition, except the following: 28 U.S.C.A., Sec. 2101 (c) set forth in the supplemental appendix attached hereto, and 28 U.S.C.A. 2112, and Rule 14 (h) and (l) of the Court of Appeals for the Seventh Circuit relating to review or enforcement of orders of administrative agencies, boards, commissions or officers, set forth in the supplemental appendix attached hereto. 5 U.S.C.A., Sec. 1040 not applicable to National Labor Relations Board enforcement proceedings is also set forth in the supplemental appendix hereof.

SUPPLEMENTAL STATEMENT

The decree of the Court of Appeals for the Seventh Circuit sought to be reviewed was entered March 20, 1961. Its entry was pursuant to Rule 14 of the Court of Appeals for the Seventh Circuit.

Previous to its entry the appellee had submitted to the Clerk a proposed form of decree in accordance with said Rule 14 (l).

Between the submission of the proposed form of the decree and its entry, it was submitted to the employer's counsel of record for consideration as to the form thereof. As authorized by said Rule, the employer's counsel filed

a brief objecting to some of the language, and a responsive brief was submitted by the appellee's counsel.

On March 21, 1961, after entry of said decree on March 20, 1961, a certified copy of the said decree of March 20, 1961, was served upon the employer's counsel of record.

The opposition brief has attached to it an appendix consisting of the so-called February 28, 1961, "judgment". The word "judgment" on that docket entry was a misnomer. Said docket entry was merely intended to record the opinion. It obviously was not intended to be a judgment or decree, nor to be in lieu of the decree. Such so-called judgment is not the type of judgment or decree referred to in 28 U.S.C.A., Sec. 2101 (c).

It is similar to a docket entry of the February 28, 1961 opinion of the Court of Appeals and was not signed, either by the clerk or by the judges of the Court of Appeals who signed the decree, nor was a copy thereof, nor notice thereof, served upon the employer previous to the service above referred to on March 21, 1961, of a certified copy of the March 20, 1961 decree herein sought to be reviewed. See docket entries in Supplemental Appendix I-d.

SUPPLEMENTAL REASONS FOR GRANTING WRIT

1. The Petition For Certiorari Filed on June 16, 1961, Was Filed Within 90 Days After the Final Decree of the Court of Appeals Signed by the Three Judges Thereof on March 20, 1961 and Was Timely.

The 90-day period for the filing of the petition for certiorari authorized by 28 U.S.C.A., Section 2101 (c) did not commence to run from the date of the decision

of the Court on February 28, 1961 (and the Clerk's misnaming of the docket entry therefrom) but rather from the entry of the Final Decree on March 20, 1961 signed by the three Judges of the Court of Appeals. No notice was given by the Clerk or by Counsel of the Docket entry of February 28, 1961. A certified copy of the March 20, 1961 Final Decree was served on the parties by the Clerk on March 21, 1961. The opposing counsel has overlooked the confusion in this field caused by the decision of the Supreme Court, filed on December 22, 1952, in *Federal Trade Commission v. Minneapolis Honeywell Regulator Co.*, 344 U.S. 206.

The Court will recall that the above Decision of December 22, 1952 was followed by the action at the March 26, 1953 Judicial Conference in promulgating the rule now found in Rule 14 of the Rules of the Court of Appeals for the Seventh Circuit which was formerly Rule 28.

In the rule of the Court of Appeals for the District of Columbia such March 26, 1953 rule is found in Rule 38 (1).

While the present language of this rule is slightly different between the two Courts of Appeal, the parties conducted themselves in accordance with Rule 14 (1) of the Rules of the Seventh Circuit. Such rule of the Seventh Circuit is set forth in the Appendix. The docket of this case in the Court of Appeals is set forth in the Supplemental Appendix I-d attached hereto and shows that the Final Decree of March 20, 1961 was submitted by the Appellee and that petitioner herein filed a Brief opposing the language thereof and that the Court subsequently entered its Final Decree.

Separate from the promulgation of the March 26, 195 uniform action by the Judicial Conference for the severa Courts of Appeal, the Congress by its Act of Augus 28, 1958 found in *28 U.S.C.A., Section 2112*, set forth i the Appendix attached hereto, separately legislated o the subject included in the said March 26, 1953 actio of the Judicial Conference. This further validated th several separate rules of the Courts of Appeal being dis cussed herein. The Legislative History of the problen related to the judicial reviews by the Courts of Appea and the U.S. Supreme Court of petitions to enforce o review Final Orders of administrative agencies is se forth in the 1958 U.S. Code and Administrative News, o page 3996 to Public Law 85-791. Thus the confusio from the variety of separate legislative provisions assur- ing full judicial review of Final Orders of the numerous administrative agencies which were brought to a crisis by the decision of this Court, dated December 22, 1952 and successively sought to be remedied by the action of the March 26, 1953 Judicial Conference and by 28 U.S.C.A., Section 2112 (among others) has made the rule of this Court in *Federal Trade Commission v. Minneapolis Honeywell Regulator Co.*, 344 U.S. 206, distinguishable from the facts in the present case. In the present case the Clerk's docket entry of the February 28, 1961 Decision was a clerical misnomer and was not either a Judgment or Final Decree of the Court which set the 90 days' running for the timely filing of the petition for certiorari herein authorized by 28 U.S.C.A., Section 2101 (c) and 29 U.S.C.A., Section 160 (e).

The several special statutory proceedings in the several Courts of Appeal authorized to review, enforce and restrain Final Orders of administrative agencies have a variety of references to the final action by the said